

## § 1010.5

the jurisdiction or non-exempt status of a particular subdivision.

### § 1010.5 Statutory exemptions.

A listing of the statutory exemptions is contained in 15 U.S.C. 1703. In accordance with 15 U.S.C. 1703(a)(2), if the sale involves a condominium or multi-unit construction, a presale clause conditioning the sale of a unit on a certain percentage of sales of other units is permissible if it is legally binding on the parties and is for a period not to exceed 180 days. However, the 180-day provision cannot extend the 2-year period for performance. The permissible 180 days is calculated from the date the first purchaser signs a sales contract in the project or, if a phased project, from the date the first purchaser signs the first sales contract in each phase.

### § 1010.6 One hundred lot exemption.

The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, the subdivision has contained fewer than 100 lots, exclusive of lots which are exempt from jurisdiction under § 1010.5. In the sale of lots in the subdivision that are not exempt under § 1010.5, the developer must comply with the Act's anti-fraud provisions, set forth in § 1010.4(b) and (c).

### § 1010.7 Twelve lot exemption.

(a) The sale of lots is exempt from the registration requirements of the Act if, beginning with the first sale after June 20, 1980, no more than twelve lots in the subdivision are sold in the subsequent twelve-month period. Thereafter, the sale of the first twelve lots is exempt from the registration requirements if no more than twelve lots were sold in each previous twelve month period which began with the anniversary date of the first sale after June 20, 1980.

(b) A developer may apply to the Director to establish a different twelve month period for use in determining eligibility for the exemption and the Director may allow the change if it is for good cause and consistent with the purpose of this section.

(c) In determining eligibility for this exemption, all lots sold or leased in the subdivision after June 20, 1980, are

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counted, whether or not the transactions are otherwise exempt. Sales or leases made prior to June 21, 1980, are not considered in determining eligibility for the exemption.

(d) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

### § 1010.8 Scattered site subdivisions.

(a) The sale of lots in a subdivision consisting of noncontiguous parts is exempt from the registration requirements of the Act if:

(1) Each noncontiguous part of the subdivision contains twenty or fewer lots; and

(2) Each purchaser or purchaser's spouse makes a personal, on-the-lot inspection of the lot purchased prior to signing a contract.

(b) For purposes of this exemption, interruptions such as roads, parks, small bodies of water or recreational facilities do not serve to break the contiguity of parts of a subdivision.

(c) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

### § 1010.9 Twenty acre lots.

(a) The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, each lot in the subdivision has contained at least twenty acres. In determining eligibility for the exemption, easements for ingress and egress or public utilities are considered part of the total acreage of the lot if the purchaser retains ownership of the property affected by the easement.

(b) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

### § 1010.10 Single-family residence exemption.

(a) *General.* The sale of a lot which meets the requirements specified under paragraphs (b) and (c) of this section is exempt from the registration requirements of the Act.

(b) *Subdivision requirements.* (1) The subdivision must meet all local codes and standards.

(2) In the promotion of the subdivision there must be no offers, by direct mail or telephone solicitation, of gifts,

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trips, dinners or use of similar promotional techniques to induce prospective purchasers to visit the subdivision or to purchase a lot.

(c) *Lot requirements.* (1) The lot must be located within a municipality or county where a unit of local government or the state specifies minimum standards in the following areas for the development of subdivision lots taking place within its boundaries:

- (i) Lot dimensions.
- (ii) Plat approval and recordation.
- (iii) Roads and access.
- (iv) Drainage.
- (v) Flooding.
- (vi) Water supply.
- (vii) Sewage disposal.

(2) Each lot sold under the exemption must be either zoned for single-family residences or, in the absence of a zoning ordinance, limited exclusively by enforceable covenants or restrictions to single-family residences. Manufactured homes, townhouses, and residences for one-to-four family use are considered single-family residences for purposes of this exemption provision.

(3) The lot must be situated on a paved street or highway which has been built to standards established by the state or the unit of local government in which the subdivision is located. If the roads are to be public roads they must be acceptable to the unit of local government that will be responsible for maintenance. If the street or highway is not complete, the developer must post a bond or other surety acceptable to the municipality or county in the full amount of the cost of completing the street or highway to assure completion to local standards. For purposes of this exemption, *paved* means concrete or pavement with a bituminous surface that is impervious to water, protects the base and is durable under the traffic load and maintenance contemplated.

(4) The unit of local government or a homeowners association must have accepted or be obligated to accept the responsibility for maintaining the street or highway upon which the lot is situated. In any case in which a homeowners association has accepted or is obligated to accept maintenance responsibility, the developer must, prior to signing of a contract or agreement

to purchase, provide the purchaser with a good faith written estimate of the cost of carrying out the responsibility over the first ten years of ownership.

(5) At the time of closing, potable water, sanitary sewage disposal, and electricity must be extended to the lot or the unit of local government must be obligated to install the facilities within 180 days following closing. For subdivisions which will not have a central water or sewage disposal system, there must be assurances that an adequate potable water supply is available year-round and that the lot is approved for the installation of a septic tank.

(6) The contract of sale must require delivery within 180 days after the signing of the sales contract of a warranty deed, which at the time of delivery is free from monetary liens and encumbrances. If a warranty deed is not commonly used in the jurisdiction where the lot is located, a deed or grant which warrants that the seller has not conveyed the lot to another person may be delivered in lieu of a warranty deed. The deed or grant used must warrant that the lot is free from encumbrances made by the seller or any other person claiming by, through, or under the seller.

(7) At the time of closing, a title insurance binder or title opinion reflecting the condition of title must be in existence and issued or presented to the purchaser showing that, subject only to exceptions which are approved in writing by the purchaser at the time of closing, marketable title to the lot is vested in the seller.

(8) The purchaser or purchaser's spouse must make a personal, on-the-lot inspection of the lot purchased prior to signing a contract or agreement to purchase.

(d) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

### § 1010.11 Manufactured home exemption.

(a) The sale of a lot is exempt from the registration requirements of the Act when the following eligibility requirements are met:

(1) The lot is sold as a homesite by one party and a manufactured home is